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No. 1047

In the Supreme Court of the United States

OCTOBER TERM, 1957

FRANK COSTELLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (R. 781a–802a) is reported at 157 F. Supp. 461. The opinion of the Court of Appeals (Pet. 2a–14a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 20, 1958 (Pet. 1a). The petition for a writ of certiorari was filed on June 4, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether petitioner is entitled to a new trial because the Government, seeking information to aid it

in the exercise of its peremptory challenges, secured, unbeknownst to members of the jury panel, information obtained from the tax returns of members of that panel.

2. Whether petitioner is entitled to a new trial on the ground that evidence was used against him which had been obtained by illegal wire tapping by state officials where the district court found (a) that the petitioner knew, or in the exercise of due diligence should have known, of the likelihood of such use prior to trial and (b) that there was sufficient evidence to sustain the conviction apart from all evidence claimed to have resulted from the wire tapping.

3. Whether petitioner is entitled to a new trial on the ground that the Government had instituted, and secured leads from, a mail watch pursuant to which post office employees recorded the names and return addresses appearing on the outside of envelopes addressed to petitioner.

STATUTES AND REGULATIONS INVOLVED

Section 55 (a) of the Internal Revenue Code of 1939, Sections 1701, 1702, and 1703 of 18 U. S. C., Sections 463C.32 and 463D.4 of Treasury Regulations 111, Appendix, and Section 41.4 of the Postal Laws and Regulations are set forth in the Appendix, *infra*, pp. 20–22.

STATEMENT

Petitioner seeks review of an order denying his motion for a new trial under Rule 33 of the Federal Rules of Criminal Procedure. The motion was filed after his conviction for income tax evasion had been sustained by the Court of Appeals and by this Court.

Petitioner was indicted in the Southern District of New York on March 11, 1953, the indictment charging in four counts that petitioner had willfully attempted to evade income taxes for the years 1946, 1947, 1948, and 1949 by filing false and fraudulent income tax returns, in violation of Section 145 (b) of the Internal Revenue Code of 1939. After an extended trial, petitioner was acquitted on the first count, convicted on the remaining three counts, and sentenced to three concurrent five-year sentences.[1] He was also fined $10,000 on each of these three counts. On appeal, the Court of Appeals affirmed the conviction on the third and fourth counts and reversed as to the second count. 221 F. 2d 668. This Court granted certiorari limited to the sufficiency of the evidence before the grand jury (350 U. S. 819) and affirmed the conviction on counts three and four (350 U. S. 359). (Pet. 3a.)

On May 15, 1956, petitioner filed a motion pursuant to 28 U. S. C., Sec. 2255, and Rule 33 of the Federal Rules of Criminal Procedure to set aside his sentence on the ground that it was illegal. This motion was denied by the District Court, and the Court of Appeals affirmed. 239 F. 2d 177. This Court again granted certiorari (352 U. S. 988) and it affirmed the order denying the motion (353 U. S. 978). (Pet. 3a.)

On November 28, 1956, petitioner filed the present motion for a new trial upon the ground that the Government had secured evidence which led to his convic-

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[1] As a result of several admissions to bail, petitioner, although sentenced in May, 1954, has served only ten months of his sentence to date. (Pet. 3a.)

tion through information obtained by wire tapping. A hearing on this motion was deferred pending this Court's decision on the issue raised by petitioner's motion to set aside his sentence. Following this Court's decision on that issue, the present motion was heard by the District Court on June 13 and 14, 1957, and from October 7, 1957, to October 22, 1957, the hearing consuming eleven court days. (R. 11a–13a, 14a–17a.) During the course of the hearing, petitioner was permitted to amend his motion to include two additional grounds for setting aside his conviction: (1) that evidence had been obtained as a result of unlawful interference with petitioner's mail; and (2) that the Government had examined the federal income tax returns of members of the jury panel prior to trial and had thus deprived petitioner of an impartial jury. (R. 23a–26a.)

At the hearing, it was shown that the District Attorney of New York County, a state official, had installed wire taps on petitioner's telephone from May 7, 1943, to November 5, 1943; from June 11, 1946, to September 10, 1946; and from September 20, 1950, to April 15, 1952. All of these taps were installed pursuant to court orders issued under Section 813–a of the New York Code of Criminal Procedure. All records of such taps and all transcriptions of intercepted conversations were produced by the District Attorney and examined by petitioner's counsel. They were marked for identification and some 242 transcriptions were received in evidence. (R. 788a.)[2]

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[2] In support of his motion in the District Court, petitioner claimed that evidence obtained by wire tapping by federal offi-

Testimony at the hearing also disclosed that, at the Government's request, a mail watch was instituted in July, 1950, with respect to mail addressed to petitioner and his wife at their homes. This watch was maintained for periods of two weeks, every two or three months, until the case was referred to the United States Attorney early in 1953. The two weeks involved in each period were the last week of one month and the first week of the succeeding month, the period in which bills are customarily received. During the periods covered by this mail watch, post office employees recorded names and return addresses appearing on the outside of envelopes addressed to petitioner and his wife. The mail was then immediately returned to the appropriate route bag or box for delivery to the addressee. (Pet. 8a; R. 793a–794a.)

During the course of the hearing on the present motion, it appeared that, prior to petitioner's trial, the prosecutor had requested an Internal Revenue agent to inspect the 1952 income tax returns of the 360 persons whose names were drawn for the panel of jurors for the April 1954 term of court. The agent inspected 150 tax returns and recorded in each instance the taxpayer's occupation, the amount and source of his income, the number of his dependents, the amount of taxes paid or refunded and any unusual deductions. On the basis of the information received, together with other information, the prosecutor classi-

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cials was also used and that the state wire tapping not only resulted in illegal evidence but also interfered with his right to counsel. The court found against him on the facts as to both of these issues and petitioner raises no issue as to either of them in this Court.

fied the jurors by a numerical system, with Class 1 representing those thought to be most favorable to the Government and Class 3 or 4 those least favorable. As ultimately constituted, the jury was composed of eight jurors in Class 1 and two each in Class 2 and Class 3. The Government exercised five of the six peremptory challenges permitted it; these were exercised against two members of the panel in Class 2 and three in Class 3. (Pet. 10a–11a; R. 798a–801a).

At the conclusion of petitioner's evidence, the Government moved to dismiss his motion on the ground that he had failed to make a *prima facie* case. After consideration of the matter, the District Court filed an opinion denying petitioner's motion for a new trial in all respects.

The District Court found that petitioner had failed to show that the availability of state wire tap evidence to federal agents was not known to him, or could not have been discovered by him, prior to the original trial. The court pointed out that petitioner knew that his telephone was tapped in 1943 and suspected it thereafter. The court further found that if all the evidence allegedly obtained from wire taps had been excluded from the trial, there nevertheless would have been sufficient evidence to sustain the conviction on counts three and four of the indictment.[3] (R. 781a–790a.)

With respect to the mail watch, the District Court found that it was authorized by postal regulations, that it was not in violation of any statute, and that

[3] As previously noted, the jury acquitted the petitioner on Count 1 and his conviction on Count 2 was reversed by the Court of Appeals. (Pet. 3a.)

the recording of information made public by the senders on the outside of envelopes did not violate any of petitioner's rights. It also found that the total of the expenditures claimed to be related to the mail watch was too small to be significant, and that if evidence as to such expenditures had been excluded there would have remained sufficient evidence to sustain the conviction. (R. 793a–798a, 802a.)

As to the examination of income tax returns of members of the jury panel, the District Court found that such examination was authorized by appropriate Regulations, that no juror was subject to surveillance by government agents either before or during the trial, that none was told that his return had been inspected, and that none was interviewed by any government representative before or during the trial. In the District Court's view, the prosecution was not required to disclose to petitioner the information upon which it relied in challenging prospective jurors. (R. 798a–801a.)

The Court of Appeals, in affirming the order of the District Court, likewise considered the separate claims made by petitioner in his motion for a new trial. With respect to evidence allegedly obtained from wire tap information, the Court of Appeals found it necessary to consider only the District Court's finding that petitioner had failed to show that the alleged use of such information was not known, or could not with due diligence have been discovered, prior to petitioner's trial. It pointed out that petitioner had known that his telephone

was tapped in 1943 but had made no effort to discover, either before or at the trial, whether any of the prosecution's evidence had been obtained through the use of wire taps. Such inaction, the Court of Appeals concluded, constituted a lack of diligence warranting rejection of this ground of petitioner's motion. (Pet. 4a–8a.)

As to the contention based upon the mail watch, the Court of Appeals held that there was no basis for finding that there had been any significant delay in delivery of petitioner's mail; that what was done was authorized by appropriate Regulations; and that there had been no violation of any provision of law. (Pet. 8a–10a.)

Petitioner's claim that he was prejudiced by the Government's inspection of the income tax returns of some of the members of the jury panel was likewise rejected. The court held that inspection of such returns was authorized by existing Regulations, and that petitioner was not entitled to all information available to the prosecution. The crucial question, as the Court of Appeals saw it, was whether petitioner was tried by an impartial jury. The court concluded that the Government's use of its information for purposes of exercising its peremptory challenges did not tend to show that the jurors chosen were not impartial.

ARGUMENT

Notwithstanding petitioner's assertion that this case involves serious questions as to the integrity of the jury system and the use of evidence obtained illegally through wire taps or a mail watch, exami-

nation shows that petitioner's rights have not been violated. In view of the prolonged history of this litigation, petitioner has a heavy burden to establish that it was an abuse of discretion to deny his belated motion for a new trial. This burden, we submit, has not been sustained.

1. Petitioner challenges the inspection of the federal income tax returns of some of the members of the jury panel and the delivery of the information obtained therefrom to the United States Attorney for his use in making peremptory challenges. His principal argument is that inspection of the income tax returns was not authorized by law. Section 55 (a) of the Internal Revenue Code of 1939 (Appendix, *infra*, p. 20) provides, however, that income tax returns constitute public records open to inspection under Regulations prescribed by the Secretary of the Treasury and approved by the President. Such Regulations have been prescribed and approved in the manner provided by law and expressly authorize the inspection here made. Section 463C.32 of Treasury Regulations 111 (Appendix, *infra*, p. 21) authorizes the inspection of returns by employees of the Treasury Department in the performance of their official duties. Section 463D.4 of the same Regulations (Appendix, *infra*, p. 21) also authorizes the furnishing of such returns to a United States Attorney for use in litigation or in preparation for litigation in which the United States is interested. The recipient of the information in the present case was the United States Attorney, and Section 463D.4 imposes no requirement that a United States

Attorney must make written application for such information, as petitioner contends.[4] Petitioner's assertion that the information furnished to the United States Attorney was made in violation of law is thus groundless.[5]

It is true, as petitioner appears to argue, that the Government had available to it information which was not available to him. But this information was useful only for the purpose of making peremptory challenges, which, of course, can be made for any reason, rational or irrational. Moreover, in criminal prosecutions, not all information available to the prosecutor is likewise available to the defendant. *Best* v. *United States,* 184 F. 2d 131 (C. A. 1st), certiorari denied, 340 U. S. 939; *Christoffel* v. *United States,* 171 F. 2d 1004 (C. A. D. C.), reversed on other grounds, 338 U. S. 84; Rule 6 (e), Federal Rules of Criminal Procedure. Specifically, a defendant is not entitled to inspection of notes made by the prosecution for its use in selecting a jury. *Christoffel* v. *United States, supra.*

The integrity of the jury system was in no way endangered by the inspection of tax returns of some members of the jury panel. None of the prospective jurors was under surveillance, was aware that his

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[4] Section 463D.4 does impose a requirement of a written application for the furnishing of returns "to an attorney of the Department of Justice." This provision, however, follows the first part of the regulation in which the furnishing of returns to a United States Attorney is authorized without limitation.

[5] As the court below also noted, petitioner may not complain of the inspection of income tax returns of other persons. *Goldstein* v. *United States,* 316 U. S. 114.

tax returns were being inspected, or was approached by any Government representative before or during the trial. What was done here amounted to nothing more than an inspection and compilation of information lawfully in the possession of the Government in order to determine whether any prospective jurors had had tax difficulties of their own and thus might be unduly biased in favor of petitioner. Compare *Best* v. *United States, supra; Christoffel* v. *United States, supra.* A defendant in a criminal case is entitled to an impartial jury, not to have particular jurors serve on a jury. *United States* v. *Puff*, 211 F. 2d 171 (C. A. 2d), certiorari denied, 347 U. S. 963. He may not complain of the Government's exercise of its peremptory challenges if the jury finally selected is in fact impartial. *United States* v. *Marchant*, 12 Wheat. 480; *Northern Pacific R. R. Co.* v. *Herbert*, 116 U. S. 642; *Hall* v. *United States*, 168 F. 2d 161 (C. A. D. C.), certiorari denied, 334 U. S. 853; *People* v. *Roxborough*, 307 Mich. 575, certiorari denied, 323 U. S. 749.[6]

Assuming, without conceding, that jurors who know that their tax returns have been specially examined might be affected in the performance of their duties, we fail to see that petitioner has standing to complain here. The jurors who sat in his case did not know,

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[6] The present case does not involve any exclusion of a class of persons from the jury panel as in *Ballard* v. *United States*, 329 U. S. 187, or in *Eubanks* v. *Louisiana*, decided May 26, 1958 (No. 550, this Term). The members of the jury panel here were admittedly selected without discrimination, and the Government exercised five of its six peremptory challenges to eliminate unacceptable jurors.

and had no way of knowing, that the prosecution had procured inspection of their returns and hence they could not have been affected.

It is recognized, however, that knowledge of the existence of a practice of special inspection of the tax returns of potential jurors raises the possibility that some persons might wish to avoid jury service in the thought that they might thereby avoid some inconvenience or prejudice as taxpayers. To avoid any possible problems in this respect in future cases, United States Attorneys are being instructed not to engage in this practice. Thus, in so far as the action involved in the instant case might be deemed potentially productive of problems in other cases, those problems are being obviated. We reemphasize that there is no problem here because the instant jury could not have been influenced by what it did not know.

2. Petitioner's motion for a new trial also asserted that the Government had made use of information obtained from telephone conversations which had been intercepted by means of wire taps installed by state officials. The District Court found that petitioner had failed to show that the alleged use of wire tap information obtained from state officials was not known, or could not with due diligence have been discovered, prior to the trial, and that, in any event, there was sufficient evidence not claimed to have been obtained from wire taps to sustain the conviction on the counts of the indictment remaining before the court. The Court of Appeals deemed it necessary to consider only the first of these findings, namely, peti-

tioner's lack of due diligence, and agreed with the District Court that such diligence had not been shown.

Petitioner's main argument on this phase of his motion now appears to be that the courts below were in error in requiring a showing by him that due diligence was exercised in discovering the alleged new evidence. (Pet. 14–16.) He argues that the courts should follow the rules set forth in *Larrison* v. *United States*, 24 F. 2d 82 (C. A. 7th), relating to false testimony, rather than those set forth in *Berry* v. *State of Georgia*, 10 Ga. 511, on newly discovered evidence bearing on the guilt of the defendant. This question, however, is no longer open to controversy. The court below found the answer to this argument not in the language of either of the cases cited, but in the decision of this Court in *Nardone* v. *United States*, 308 U. S. 338. There, the rule was stated that when a claim is made that any part of the Government's evidence is tainted with illegality, the defendant must satisfy the court that he could not at an earlier stage have discovered such illegality. 308 U. S. 338, 342.[7] Actually, this same concept is fairly comprehended in the third condition, quoted by the court below (Pet. 5a) from the *Larrison* case itself:

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[7] In fact, in the original motion for a new trial, as well as in his amended and further amended motions, petitioner made appropriate allegations that the newly discovered evidence was not known to him at the time of trial and could not, with due diligence, have been discovered sooner. (R. 16a, 23a, 25a.) Again, at the hearing before the District Court, petitioner's counsel admitted that he had the burden of establishing that the newly discovered evidence could not have been discovered earlier in the exercise of due diligence. (R. 36a.)

> (c) that the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

The proof adduced at the hearing in the District Court clearly demonstrates petitioner's lack of due diligence. He admitted that he knew in 1943 that his telephone was tapped and that these wire taps were again called to his attention in 1951. (R. 657a–658a.) At the time of his trial in this case, he knew that there had been previous wire taps on his telephone. (R. 657a.) In addition, counsel who represented him in the trial of this case testified in the hearing below that they had known as early as 1951 that petitioner's telephone had been tapped. (R. 654a, 701a.) Notwithstanding these facts, petitioner made no effort to ascertain, either before or during his trial in 1954, whether transcriptions of his intercepted telephone conversations had been made available to and used by federal agents. Since he had known of the wire tapping for many years, he had the right to establish this at the trial and to show, by calling or cross-examining government agents, whether the Government had made use of such interceptions. *Nardone v. United States, supra.* This he completely failed to do. Instead, he waited two years, and only after his conviction had been affirmed and his motion to set aside his sentence had been denied by the District Court did he file the present motion. He now asserts that it was not until shortly before the motion was filed that he learned that the results of the wire taps

had been communicated to federal agents.[8] The test, however, is not only what he knew, but what he could have discovered by the exercise of due diligence. As this Court noted in *Nardone* (308 U. S. at 341–342), "timely steps must be taken to secure judicial determination of claims of illegality on the part of agents of the Government in obtaining testimony." Timely steps could have been taken before petitioner's trial, and it was incumbent upon petitioner to make a reasonable effort to discover whether the Government had obtained evidence through the use of illegal wire taps. His failure to do so, as the Court of Appeals correctly held, constituted a lack of due diligence sufficient to warrant denial of his motion.

Petitioner also attempts to excuse his inaction by asserting that until this Court's decision in *Benanti* v. *United States*, 355 U. S. 96, the use by federal agents of wire taps made by state officials was generally believed not to be open to attack. His actions, however, do not support his attempted justification, for he filed the present motion after the decision of the Court of Appeals for the Second Circuit in *Benanti* and before the reversal of that decision by this Court. In any event, petitioner's attempted justifi-

[8] Petitioner argues that the evidence came to his attention in connection with a denaturalization proceeding (Pet. 6–7). The footnote which follows (Pet. 7) should not be taken as meaning that this Court sustained the dismissal of that proceeding on the ground that the Government was relying on illegal evidence. The decision of this Court, *Costello* v. *United States*, 356 U. S. 256, makes it clear that the basis of the Court's action was failure to comply with the statutory requirements for an affidavit of good cause.

cation is without legal merit. A party's belief that the state of the law, on a question which had not been decided by this Court, is adverse to him does not excuse the failure to assert his rights at the proper time. *Sunal* v. *Large*, 332 U. S. 174.

The finding of the District Court that there was sufficient evidence not claimed to have resulted from wire taps to sustain the conviction is also clearly correct. Petitioner's conviction was obtained by evidence establishing his net worth in the beginning of each of the years involved and his expenditures in those years. In order to do this, the prosecution had to begin with petitioner's sworn statement of October 18, 1937, that his net worth on that date was $40,000. Expenditures proved from October 18, 1937, through the year 1949 totaled some $622,000. As the District Court noted, the total of expenditures the evidence of which could possibly be claimed by petitioner to have resulted from wire taps was at most $87,290.[9] Without undertaking any extensive analysis of petitioner's expenditures during the years in question,[10] it is apparent that the District Court was correct in concluding that there was sufficient evidence not possibly connected with wire taps to support

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[9] Even this sum is in excess of the amount which petitioner might properly claim resulted from illegal wire taps. As the District Court noted, many of the recipients of payments included in this total were never mentioned in any telephone conversation in which petitioner participated. He has no standing to complain of interceptions of conversations to which he was not a party. *Goldstein* v. *United States*, *supra*.

[10] See *United States* v. *Costello*, 221 F. 2d 668, 671–673 (C. A. 2).

petitioner's conviction on counts 3 and 4 of the indictment.

The correctness of the District Court's findings of lack of due diligence and of the sufficiency of the evidence does not present a question warranting review. As this Court has noted, *United States* v. *Johnson*, 327 U. S. 106, 111, findings of fact made by the District Court on a motion for a new trial, unless wholly unsupported by evidence, are not properly reviewable either by this Court or by the Court of Appeals.

3. Petitioner also complains that the Government obtained information by recording the names and addresses appearing on the outside of mail addressed to him. This practice, he asserts, was in violation of law. The imposition of a mail watch for law enforcement purposes was expressly authorized, however, by Section 41.4 (b) of the Postal Laws and Regulations, 39 Code of Federal Regulations (Appendix, *infra*, p. 22). And, contrary to petitioner's claim, the mail watch was not in violation of Sections 1701, 1702, and 1703 of the Criminal Code (Appendix, *infra*, pp. 20–21).

Section 1702 prohibits the taking of mail "out of any post office" with design "to pry into the business or secrets of another." Clearly, there has been no violation of this statute. The District Court found that postal employees merely recorded the names and return addresses appearing on the outside of envelopes and then restored the letters in question to their regular bag or box for normal delivery. No mail was taken out of any post office. Nor was there any

design to pry into the business or secrets of petitioner. Since the information appeared on the outside of the envelopes, it had been made public.[11] This Court has previously drawn a distinction between material which is sealed and that which is open for inspection. *Ex parte Jackson,* 96 U. S. 727. See, also, *Oliver* v. *United States,* 239 F. 2d 818 (C. A. 8th).

Likewise, there was no violation of Section 1703, which penalizes any postal employee who unlawfully detains or delays a letter which has come into his possession. To begin with, here there was no significant delay. Moreover, it is well settled that under this section mere detention or delay alone is not sufficient; the detention or delay must be for an unlawful purpose. *United States* v. *Kirby,* 7 Wall. 482; *Fliashnick* v. *United States,* 223 Fed. 736 (C. A. 2d). That element is also lacking.

Nor can it be seriously contended that the recording of information appearing on the outside of an envelope—a task consuming a few moments—constitutes a willful obstruction or retardation of passage of mail within the meaning of Section 1701. See *United States* v. *Coplon,* 88 F. Supp. 921, 931 (S. D. N. Y.). This action was not taken by intruders, but by postal employees acting under Postal Regulations.[12]

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[11] In fact, petitioner and his wife resided at a large apartment house in New York City and, under the Postal Regulations, mail addressed to tenants in that house was delivered in bulk and was sorted and distributed by employees of the apartment house. (R. 795a–796a.)

[12] Moreover, as the District Court correctly found, the total expenditures as to which evidence could be claimed to have resulted from the mail watch was too small to have any signifi-

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1958.

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cance. These expenditures totalled $104 for the period prior to 1946 and $16,800 for the period after 1946. (R. 798a, 802a.) In the face of proven expenditures of $622,000 (R. 789a), the insignificance of these expenditures is immediately apparent.

APPENDIX

Internal Revenue Code of 1939:

SEC. 55. PUBLICITY OF RETURNS.

(a) *Public Record and Inspection.*—

(1) Returns made under this chapter upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

* * * * *

(26 U. S. C. 1952 ed., Sec. 55)

Title 18 U. S. C.:

SEC. 1701. Obstruction of mails generally.

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined not more than $100 or imprisoned not more than six months, or both.

SEC. 1702. Obstruction of correspondence.

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

*

SEC. 1703. Delay or destruction of mail or papers.

(a) Whoever, being a postmaster or Postal Service employee, unlawfully detains, delays, or opens any letter, postal card, package, bag, or mail intrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General; or secretes, or destroys any such letter, postal card, package, bag, or mail, shall be fined not more than $500 or imprisoned not more than five years, or both.

* * * * *

Treasury Regulations 111, Appendix:

PAR. 110.

* * * * *

SEC. 463C.32 [As added by T. D. 4929, 1939–2 Cum. Bull. 91]. *Treasury Department officials and employees.* The officers and employees of the Treasury Department whose official duties require inspection of returns may inspect any such returns without making such written application. * * *

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SEC. 463D.4 [As added by T. D. 4945, 1939–2 Cum. Bull. 97]. *Use of returns in litigation.* The return of an individual, partnership, corporation, or fiduciary, or a copy thereof, may be furnished to a United States attorney for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation; or to an attorney of the Department of Justice, for like use, upon written request of the Attorney General, the Assistant

to the Attorney General, or an Assistant Attorney General. If a return or copy is thus furnished, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States Government is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto.

Postal Laws and Regulations (1948 ed.), Title 5, 39 Code of Federal Regulations (1949 ed.):

SEC. 41.4. *Giving information about mail matter.*— * * *

(b) *Exception for official request.* Upon official request of a representative of another executive department, agency, or independent establishment of the Federal Government and the presentation of proper credentials, postmasters may, when practicable, furnish for official use information regarding the addresses, return cards, or postmarks on mail matter, provided the labor involved in complying with the request does not interfere with postal business, or result in material cost. Such mail shall not be withheld from the addressee nor delayed in delivery. When a postmaster is in doubt as to the advisability of complying with such a request, or material cost is involved, he should write to the First Assistant Postmaster General for instructions, except that in cases involving registered, insured, or collect-on-delivery mail he should submit the question to the Third Assistant Postmaster General, Division of Registered Mail.

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